

Amendment No. 2 to HB0764

Davis
Signature of Sponsor

AMEND Senate Bill No. 591*

House Bill No. 764

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 38-8-301, is amended by deleting the section and substituting:

As used in this part, unless the context otherwise requires:

- (1) "Committee" means a police advisory and review committee;
- (2) "Head of a law enforcement agency" means a chief of police of a municipal police force or a county sheriff, as applicable;
- (3) "Internal affairs unit" means a division of a local law enforcement agency that investigates allegations of misconduct by law enforcement officers employed by the agency;
- (4) "Law enforcement officer" means any person employed by any law enforcement agency of a local government entity, excluding a head of a law enforcement agency, who has a duty imposed by law to:
 - (A) Maintain public order;
 - (B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and
 - (C) Investigate the commission or suspected commission of offenses;
- (5) "Local governing body" means the city council, city commission, county commission, metropolitan council, or board of mayor and aldermen of a city;

(6) "Local government entity" means any city, town, municipality, county, including any county having a metropolitan form of government in this state;

(7) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police force;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police force; or

(C) Within the unincorporated territory of a county, the sheriff's office; and

(8) "Mayor" means the officer vested by either the city or county charter or general law with the executive powers of a local government entity.

SECTION 2. Tennessee Code Annotated, Section 38-8-312, is amended by deleting the section and substituting:

(a) It is the express intent of the general assembly that:

(1) Sections 38-8-310 — 38-8-311 and this section apply to all local government entities; and

(2)

(A) This section preempts any existing law, ordinance, resolution, enactment, charter provision, or regulation by a local governing body concerning a police advisory and review committee, community oversight board, or other similar police oversight body, which as of January 1, 2023 does not conform with the requirements of this section; and

(B) A local governing body that created a police advisory and review committee, community oversight board, or other similar police oversight body prior to July 1, 2023, must comply with this section within one hundred twenty (120) days of July 1, 2023, or the police advisory and

review committee, community oversight board, or other similar police oversight body is terminated.

(b)

(1) A local governing body is authorized, upon its own initiative and upon the adoption of an ordinance or resolution by a two-thirds (2/3) vote at two (2) separate meetings, to create a police advisory and review committee for the governing body.

(2) The purpose of the committee is to strengthen the relationship between citizens and the law enforcement agency; to ensure the timely, fair, and objective review of citizen complaints while protecting the individual rights of local law enforcement officers; and to make recommendations concerning citizen complaints to the head of a law enforcement agency.

(c)

(1) A committee consists of seven (7) members, each of whom must:

(A) Possess a reputation for fairness, integrity, and responsibility, and have demonstrated an active interest in public affairs and public service;

(B) Be a registered voter, as defined by § 2-1-104(a)(24), of the local government entity for which the committee is established; and

(C) Not be a current employee of a local governing body.

(2) A committee shall not restrict or otherwise limit membership based upon demographics, economic status, or employment history.

(d)

(1) Committee members are appointed by the mayor and confirmed by a majority vote of the local governing body, with initial appointments to be made for the following terms:

(A) Two (2) members of the committee are appointed for one-year terms;

(B) Two (2) members of the committee are appointed for two-year terms; and

(C) Three (3) members of the committee are appointed for three-year terms.

(2) No more than two (2) persons may be appointed from one (1) district or ward within a local government entity that is represented by a member of a local governing body.

(3) Following the initial appointments, all subsequent appointments, except to fill vacancies, are for three-year terms.

(4) Vacancies occurring other than through the expiration of terms are filled for the remainder of the term of the member being replaced.

(5) A committee member appointed pursuant to this subsection (d) shall not serve more than two (2) consecutive terms.

(6)

(A) Upon making the initial appointments to the committee, the mayor shall designate one (1) member of the committee to convene the first regular meeting of the committee.

(B) At its first regular meeting, the committee shall elect one (1) of its members to serve as chair, who serves a term of one (1) year or until a successor is elected. The chair may appoint other officers as the chair deems appropriate.

(e)

(1) Upon the recommendation of a majority of the committee members or by a finding of the mayor, the mayor, with a majority approval of the local

governing body, may remove a member of the committee for official misconduct or neglect of duty including neglect of any duty in subsection (h).

(2) Members who are absent from three (3) consecutive regular committee meetings are considered to have vacated their positions on the committee and may be replaced.

(3) Members who cease to possess the qualifications for membership on the committee under subdivision (c)(1) are deemed to have forfeited their position on the committee.

(f) A person shall not receive compensation for services performed as an appointed member of the committee.

(g) Each person appointed to the committee shall complete the citizen's police academy course offered by the law enforcement agency and any other training deemed appropriate by the head of the law enforcement agency to educate citizens on law enforcement operations, practice, and training. The course must be completed within six (6) months of the date of a person's appointment to the committee. Members who fail to complete required courses are considered to have vacated their positions on the committee and may be replaced.

(h) Members of the committee shall:

(1) Respect an individual's, including a local law enforcement officer's, right to privacy, and maintain confidentiality of records;

(2) Maintain the confidentiality of internal affairs unit files; personnel files; and other files, records, or recordings received pertaining to their membership on the committee;

(3) Excuse themselves from participating in the review of a complaint in which they have a personal, professional, or financial conflict of interest; and

(4) Conduct themselves in a manner that ensures public confidence in the fairness, impartiality, and integrity of the committee, and refrain from making

inappropriate or prejudicial comments regarding a matter being reviewed by the committee or which may be reasonably expected to be reviewed by the committee.

(i) The attorney for the local government entity shall investigate an allegation of misconduct by a committee member or their staff and submit a written report of investigative findings to the mayor and local governing body.

(j)

(1) The mayor may select an executive director of the committee whose appointment is subject to the approval of a majority of the members of the committee.

(2) The executive director must:

(A) Possess a reputation for fairness, integrity, and responsibility and have demonstrated an active interest in public affairs and service;

(B) Be a registered voter of the local government entity for whom the executive director is employed;

(C) Not be a former employee of a law enforcement agency for the preceding twelve (12) months;

(D) Possess prior investigative experience, such as would be possessed by an attorney or a local law enforcement officer;

(E) Respect an individual's, including local law enforcement officer's, right to privacy, and maintain confidentiality of records;

(F) Maintain the confidentiality of all law enforcement records and files that the executive director or committee receives as a result of the committee's performance of its official duties;

(G) Not participate in the review of a complaint in which the executive director has a personal, professional, or financial conflict of interest;

(H) Conduct the duties of the office in a manner that maintains public confidence in the fairness, impartiality, and integrity of the committee, and refrain from making inappropriate or prejudicial comments regarding a matter being reviewed by the committee or which may be reasonably expected to be reviewed by the committee; and

(I) Comply with all rules applicable to other employees of the local government entity.

(3)

(A) A person shall not be approved as executive director under subdivision (j)(1) until the person has:

(i) Supplied a fingerprint sample for the purpose of a state criminal history background check to be conducted by the Tennessee bureau of investigation, as well as a national criminal history background check to be conducted by the federal bureau of investigation; and

(ii) Submitted to a lawfully administered test designed to detect the presence of a controlled substance or a controlled substance analogue.

(B) The local governing body shall pay the costs incurred to conduct the criminal history background check and to administer the test under subdivision (j)(3)(A). The local governing body may require the applicant to pay the costs associated with the criminal history background check and the test. Payment must be made in accordance with § 38-6-103.

(C) The Tennessee bureau of investigation and the entity conducting the test shall report the results of the criminal history

background check and test to the mayor or the mayor's designee within five (5) business days of the bureau's receipt of such results.

(D) The results of the criminal history background check and test are deemed to be confidential under title 10, chapter 7, part 5 and are not required to be disclosed or made available under § 10-7-503(a).

(k)

(1) The executive director shall accept written, sworn complaints from members of the public regarding misconduct of local law enforcement officers and shall forward the complaints to the head of the internal affairs unit of the law enforcement agency within three (3) business days of their receipt. Upon receipt of a complaint, the unit shall immediately cause an investigation to be conducted of the allegations pursuant to the standard operating procedures of the law enforcement agency. The executive director may also accept unsworn or anonymous complaints and, if accepted, refer the complaints to the internal affairs unit for investigation.

(2) Upon notification by the head of the internal affairs unit that an investigation of an allegation of misconduct by a local law enforcement officer is closed, whether the investigation was prompted by a complaint received by the executive director or otherwise, the executive director may review the unit file or the referral action form and determine if the investigation is complete.

(3)

(A) If the executive director determines that the investigation is complete in accordance with subdivision (k)(2), then the executive director shall file a report with the committee at its next regularly scheduled meeting that contains a copy of the internal affairs unit case, summary, or referral action form, and any documentation of disciplinary action pertaining to the case.

(B) If the executive director determines that the investigation is not complete, then the executive director shall notify the committee, at its next regularly scheduled meeting, that, in the executive director's opinion, additional investigation or additional time may be required for the investigation to be complete.

(I) At each of the regularly scheduled committee meetings, the executive director shall file a report with the committee that details the resolution of unsworn or anonymous complaints the executive director has been able to resolve without an investigation by the internal affairs unit.

(m) The executive director may request legal services and advice from the attorney for the local government entity that provides legal services to the local government for which the executive director is employed. If the attorney for the local government entity determines that the provision of legal services and advice would constitute a conflict of interest, then the attorney shall advise the executive director of the conflict and the executive director may request the attorney for the local government entity to provide other outside counsel for such legal services and advice.

(n) The executive director shall:

- (1) Ensure the proper recording of the minutes of the committee;
- (2) Maintain proper records and files pertaining to committee business;
- (3) Receive and record all exhibits, petitions, documents, or other materials presented to the committee in support of or in opposition to a question before the committee;
- (4) Comply with state law and local ordinances regarding notice of meetings;
- (5) Provide complainants with information about the complaint process;
- (6) Be a notary public;

(7) Compile statistical information regarding complaints of misconduct by law enforcement officers as reported to the executive director from a member of the public, reported to the internal affairs unit where the investigation was reviewed by the executive director, or which were initiated by the executive director; and

(8) Include the information compiled under subdivision (n)(7) in an annual report to the head of the law enforcement agency, the mayor, and the local governing body of the committee's activities.

(o)

(1) The committee shall review all reports submitted by the executive director under subdivision (k)(3)(A).

(2) If the executive director finds that an investigation is not complete under subdivision (k)(3)(B), then the committee may, by a majority vote of its members:

(A) Request the head of the law enforcement agency to conduct a further investigation of the incident, specifying that additional information is needed; or

(B) Direct the executive director to return the investigation to the internal affairs unit for additional investigation.

(3) The executive director shall report any additional investigative findings made to the committee, and upon completion of its inquiry, the committee shall report its written findings and conclusions to the head of the law enforcement agency, and the mayor.

(4)

(A) The committee shall have access to all public records it deems necessary to conduct its affairs in furtherance of its duties under

this section, including law enforcement agency records. Such records include:

- (i) Complaints and supporting documents provided by complainants;

- (ii) Offense, incident, and arrest reports; and

- (iii) Incident-related documents such as schedules, dispatch notes, dispatch tapes and transcriptions, citations, photographs, and records of interviews with complainants, employees, and witnesses.

(B) The committee shall not access nonpublic records, including employee medical records, or records that are otherwise exempt from disclosure under any state or federal law.

(5)

(A) Upon completion of the review of an internal affairs investigation, the committee may, subject to its own specific findings and conclusions, make recommendations to the head of the law enforcement agency for the improvement of law enforcement policies and activities and to benefit the community.

(B) All meetings must be open to the public and the head of the law enforcement agency, or their designee, may attend and provide information and advice to, or accept the recommendations of, the committee, if any.

(6)

(A) The committee shall compile a comprehensive report of its activities at least once a year, with the report to contain statistics and summaries of citizen complaints, including a comparison of the committee's findings and conclusions with those of the internal affairs

unit, along with the actions taken by the head of the law enforcement agency.

(B) The report compiled in subdivision (o)(6)(A) must be submitted to:

(i) The executive director for inclusion in the executive director's annual report to the head of the law enforcement agency;

(ii) The mayor;

(iii) The local governing body;

(iv) The chairs of the civil justice and criminal justice committees of the house of representatives; and

(v) The chair of the judiciary committee of the senate.

(7)

(A) The committee may request legal services and advice from the attorney for the local government entity who provides legal services to the local government entity for which the committee serves. If the attorney for the local government entity determines that the provision of legal services and advice would constitute a conflict of interest, then the attorney for the local government entity shall advise the committee of the conflict and the committee may request the attorney for the local government entity to provide other outside counsel for such legal services and advice.

(B) If the executive director is prohibited from participating in the review of a complaint pursuant to subdivision (j)(2)(G), then the committee may petition the mayor to appoint a temporary assistant to perform the duties of the executive director.

(p)

(1) The committee shall adopt rules of procedure for the transaction of committee business not inconsistent with this section.

(2) Four (4) members of the committee constitute a quorum. A meeting of the committee must not commence or continue in the absence of a quorum, and a majority vote of those forming a quorum is required for action to be taken by the committee except where otherwise specified in this section.

(3) Regular meetings of the committee must be held no less than quarterly, on the first Wednesday of January, April, July, and October, or as the committee may otherwise elect. A scheduled meeting may be rescheduled at the preceding regular meeting. The chairman and three (3) members of the committee may call a special meeting of the committee upon at least five (5) days' notice.

(4) Committee meetings and records must be open to the public in accordance with title 8, chapter 44, part 1, and title 10, chapter 7. The committee shall provide an opportunity for public comment about an investigation being reviewed by the committee pursuant to rules established by the committee.

(5)

(A) A police advisory and review committee does not have the power to issue subpoenas for documents or to compel witness testimony.

(B) This subdivision (p)(5) does not prohibit the issuance of a subpoena by a local governing body as otherwise provided by law.

(C) A subpoena issued by a local governing body, on behalf of a police advisory and review committee, must:

(i) Be issued pursuant to majority vote of the local governing body;

(ii) Not be issued in the form of a blanket authorization, but must specify each document to be produced; and

(iii) Not be issued for documents that are confidential under state or federal law.

(D) Notwithstanding subdivision (p)(4), any document provided to a committee that is confidential under state or federal law must be treated as confidential and must not be released to the public.

(q)

(1) The committee or its staff shall not review an investigation:

(A) Concerning an incident that occurred prior to January 1, 2023;

(B) Prior to the closure of an investigation by the internal affairs unit or of a criminal investigation;

(C) While the complainant, the officer complained about, or a witness is actively engaged in pursuing a remedy provided by the rules and regulations of the civil service merit board of the local government entity; or

(D) If the complainant has initiated, threatened, or given notice of the intent to initiate litigation against the local government entity or its employees.

(2) The committee shall not direct the head of the law enforcement agency to alter or impose disciplinary action against an employee of the local law enforcement agency.

SECTION 3. Tennessee Code Annotated, Section 38-8-309, is amended by deleting the section and substituting the following:

Sections 38-8-301 – 38-8-308 of this part shall apply only to those agencies that now provide a property interest in employment for their police officers and that have no other established procedures for dealing with the dismissal, demotion, suspension or transfer for punitive reasons of police officers.

SECTION 4. This act takes effect July 1, 2023, the public welfare requiring it.